

WEST VIRGINIA SECURITIES COMMISSION

STATEMENT OF POLICY

Debt Securities

June 24, 2010

This Statement of Policy is adopted by the West Virginia Securities Commission pursuant to the authority of the Securities Commissioner of the State of West Virginia granted under Chapter 32 of the West Virginia Code. The West Virginia Securities Commissioner has determined that the following Statement of Policy relating to debt securities is consistent with public investor protection and is in the public interest. The Commissioner may waive any requirement of this Statement of Policy for good cause, as he may determine.

I. DEFINITIONS. The following definitions shall apply to this Statement of Policy.

A. Adjusted Cash Flow is the issuer's cash flow adjusted on a pro forma basis to reflect:

- 1.** The elimination of interest and fees on debt or debt securities and of cash dividends on preferred stock that are to be retired with the proceeds derived from the offering;
- 2.** The effect of any acquisitions or capital expenditures that were made by the issuer after its last fiscal year, or which are proposed or required for the current fiscal year, which materially affect the issuer's cash flow;
- 3.** The effect of interest and fees on debt, debt securities, or cash dividends paid after the issuer's last fiscal year;
- 4.** The effect of any interest and fees on debt or debt securities and of cash dividends on preferred stock or common stock that were issued during the issuer's last fiscal year, but which were outstanding for only a portion of such fiscal year, as if such debt, debt

securities, preferred stock or common stock had been outstanding for the entire fiscal year;

5. The effect of imputed or deferred charges of zero coupon debt or debt securities for the issuer's last fiscal year and any additional charges on such debt or debt securities issued after the issuer's last fiscal year;
 6. The effect of accrued dividends on preferred stock for the issuer's last fiscal year and any additional dividends on such preferred stock issued after the issuer's last fiscal year; and
 7. The effect of any other material changes to the issuer's future cash flow.
- B.** An Affiliate is a person who, directly or indirectly, controls, is controlled by, or is under common control with the person specified herein.
- C.** An Associate, when used to indicate a relationship with a person, includes:
1. A person, other than the issuer or majority-owned subsidiaries of the issuer, who is an officer, director, partner, or a direct or indirect, legal or beneficial owner of five percent (5%) or more of any class of equity securities of a corporation or legal entity;
 2. A person who has a substantial beneficial interest or serves as a trustee or in a similar capacity for a trust or other estate;
 3. A person's spouse and relatives, by blood or by marriage, if the person is a promoter of the issuer, its subsidiaries, its affiliates, or its parent.
- D.** Cash Flow is the issuer's after-tax earnings that are derived from its normal operations, exclusive of extraordinary and nonrecurring items, less interest and dividends, plus certain noncash charges against earnings such as depreciation, depletion and amortization, determined according to generally accepted accounting principles, consistently applied.

- E.** Control is the power to direct or influence the direction of the management or policies of a person, directly or indirectly, through the ownership of voting securities, by contract or otherwise.
- F.** Equity Securities include shares of common stock or similar securities and convertible securities, warrants, options or rights that may be converted into or exercised to purchase, shares of common stock or similar securities.
- G.** A Person is an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, a government or a political subdivision of a government, or any other legal entity.
- H.** A Promoter may include:
 - 1.** A person who, alone or in conjunction with one or more persons, directly or indirectly, took the initiative in founding or organizing the issuer or controls the issuer:
 - 2.** A person who, directly or indirectly, receives, as consideration for services and/or property rendered, five percent (5%) or more of any class of the issuer's equity securities or five percent (5%) or more of the proceeds from the sale of any class of the issuer's equity securities. A person, who receives securities or proceeds solely as underwriting compensation, is excluded from the definition of promoter if that person falls outside of the definitions of section I-H-1 above, or sections I-H-3 through I-H-5, below.
 - 3.** A person who is an officer or director of the issuer;
 - 4.** A person who legally or beneficially, directly or indirectly, owns five percent (5%) or more of any class of the issuer's equity securities ("5% shareholder") if that person was in control of the issuer at the time of acquiring five percent (5%) or more of any class of the issuer's equity securities or if that person is in control of the issuer at the time of the public offering of the issuer's equity securities; or

5. A person who is an affiliate or an associate of a person specified in sections I-H-1 through I-H-4, above.
- II.** A public offering of debt securities may be disallowed by the Commissioner if the issuer's adjusted cash flow for the last fiscal year or its average adjusted cash flow for the last three (3) fiscal years prior to the public offering was insufficient to cover its fixed charges, meet its debt obligations as they became due, and service the debt securities being offered.
- III.** Notwithstanding section I-A-6 above, accrued dividends of cumulative preferred stock having a stated interest rate may be excluded from adjusted cash flow at the discretion of the Commissioner.
- IV.** The Commissioner may choose to not apply section II above, to public offerings of convertible debt securities that are superior in right of payment of interest and liquidation proceeds to any convertible debt that is or may be legally or beneficially, directly or indirectly, owned by promoters. The risks of failure to meet debt service obligations and the equity characteristics of such securities shall be disclosed in the prospectus.
- V.** Unless the commissioner permits otherwise, public offerings of debt securities shall be offered and sold pursuant to a Trust Indenture ("Indenture") which adequately protects the rights of the purchasers. These protections include, but are not necessarily limited to:
- A.** The Indenture shall comply with the provisions of the Trust Indenture Act of 1939. This shall be disclosed in the prospectus.
 - B.** The events of default of the Indenture shall be disclosed in the prospectus.
 - C.** The trustee shall be provided with adequate reports, including any compliance reports from independent auditors, to allow the trustee to ensure compliance with the Indenture.

- D.** Neither the trustee nor its promoters may be major creditors of the issuer or its affiliates.
- E.** The Indenture shall provide that upon any consolidation, merger, recapitalization, reorganization, pledge foreclosure, equity or share exchange, conveyance or transfer of the properties and assets of the issuer substantially as an entirety, or any other transaction having a substantially equivalent effect, the successor person shall expressly assume the payment obligations on the debt securities and the performance of the covenants of the Indenture.
- F.** The Indenture shall provide that interest will accrue and be paid to the date(s) of redemption or conversion of the debt securities.
- VI.** If the issuer's cash flow is subject to cyclical fluctuations or if the commissioner deems it necessary for investor protection, the commissioner may require that the issuer establish a sinking fund or redemption requirements.

Glen B. Gainer, III
State Auditor
Commissioner of Securities

By: Lisa A. Hopkins
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Senior Deputy Commissioner of Securities

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